

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:04
PLR-128287-07

Date: DECEMBER 11, 2007

RE:

Legend

Decedent =
Spouse =
Trust A =
Trust B =
Trust C =
Bank =
Date 1 =
Date 2 =
Attorney 1 =
Attorney 2 =

Dear :

This is in response to your authorized representative's submission, dated June 13, 2007, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations: (i) to sever Trust A into two trusts, a GST Exempt Trust and a GST Non-Exempt Trust, under § 26.2654-1(b) of the Generation-Skipping Transfer Tax Regulations; (ii) to make a reverse qualified terminable interest property (QTIP) election for the GST Exempt Trust under § 2652(a)(3) of the Internal Revenue Code, and (iii) to allocate Decedent's GST exemption to Trust C and the GST Exempt Trust pursuant to § 2642(g).

On Date 1, Decedent died testate, survived by Spouse. Pursuant to Paragraph 4(a) of Decedent's will, the rest and residue of Decedent's estate is to be held in trust for the benefit of Spouse. Paragraph 4(c) provides that the executor is

authorized to make any elections provided for in the Internal Revenue Code (including § 2056(b)(7), as amended), in order to take advantage of any federal estate tax marital deduction in effect upon Decedent's death. Bank is the representative of Decedent's estate and the trustee of the trusts created under Decedent's will.

Spouse retained Attorney 1 for assistance with various aspects of administration of Decedent's estate and to prepare Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax return.

Pursuant to Decedent's will, three trusts were created from the residue of his estate: Trust A and Trust B, marital trusts intended to be QTIP trusts within the meaning of § 2056(b)(7), and Trust C. Each trust has GST potential. The executor made a reverse QTIP election under § 2652(a)(3) for Trust A and allocated all of Decedent's GST exemption to Trust A upon the advice of Attorney 1. It is represented Attorney 1 misconstrued Decedent's will regarding the GST potential of Trust C.

Spouse died on Date 2. Attorney 2 was engaged by Spouse's estate to prepare and file Spouse's Form 706. The errors on Decedent's Form 706 were discovered by Attorney 2 during the preparation of Spouse's Form 706.

Section 2601 imposes a tax on every generation-skipping transfer (GST) which is defined under § 2611(a) as a: (1) taxable distribution; (2) taxable termination; and (3) direct skip.

Under § 2631(a), for purposes of determining the inclusion ratio, every individual is allowed a GST exemption amount that may be allocated by the individual (or his executor) to any property with respect to which the individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 2632(a)(1) provides that an individual's GST exemption may be allocated at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such return is required to be filed.

Under § 26.2632-1(d)(1), an allocation of a decedent's available GST exemption by the executor of the decedent's estate is made on Form 706 filed on or before the date prescribed for filing the return by § 6075(a) (including any extensions granted). An allocation of GST exemption with respect to property included in the gross estate of a decedent is effective as of the date of death.

Section 2642(b)(2) provides generally that if property is transferred as a result of the death of the transferor, the value of the property for purposes of determining the inclusion ratio under § 2642(a)(1) shall be the value of the property as finally determined for estate tax purposes.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute).

Notice 2001-50, 2001-34 I.R.B. 189, provides, in part, that under § 2642(g)(1)(B), the time for allocating the GST exemption to transfers at death is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(2) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based upon the facts submitted and the representations made, the request for an extension of time to allocate Decedent's GST exemption to Trust C and the GST Exempt Trust is denied. All of Decedent's GST exemption was affirmatively allocated at his death to Trust A. Section 2631(b) provides that allocations of GST exemption are

irrevocable once made. Since your request is denied with respect to allocating Decedent's GST exemption, rulings on requests to sever Trust A into two trusts and to make a reverse QTIP election with respect to one of the severed trusts are not necessary.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy for § 6110 purposes
Copy of this letter